

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of TREVOR HELGEMO,  
ZACHARY HELGEMO, ALYSSA HELGEMO,  
AND DESIREE HELGEMO, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellant,

v

DONALD WAYNE HELGEMO,

Respondent-Appellee.

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UNPUBLISHED

April 17, 2007

No. 271047

Oakland Circuit Court

Family Division

LC No. 2006-718616-NA

Before: Donofrio, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Petitioner appeals as of right the trial court order dismissing its petition requesting the court to take temporary custody of the minor children and terminate respondent's parental rights at the initial dispositional hearing. We reverse and remand for further proceedings consistent with this opinion.

The petition at issue alleged that respondent was charged with four counts of first-degree criminal sexual conduct for allegedly sexually abusing a ten-year-old unrelated child with whom respondent lived. The petition also alleged that respondent failed to provide financial support for his children, failed to contact them for approximately six months when he was allowed supervised parenting time, physically and verbally abused the children's mother in the presence of the children, and verbally abused the children. The referee considered these allegations during a preliminary inquiry conducted pursuant to MCR 3.962, found probable cause that they were true and that the petition complied with the requirements of MCR 3.961(B), and authorized the petition.<sup>1</sup> The trial court granted respondent's motion to dismiss the petition and declined to

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<sup>1</sup> Under MCR 3.962, "when a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition." At the preliminary inquiry, the court may "[d]eny authorization of the petition," "[r]efer the matter to alternative services," or "[a]uthorize the filing of the petition if it contains the information required by MCR 3.961(B),

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exercise jurisdiction over the children, finding that petitioner “failed to allege facts which, if true, would result in the children coming within the jurisdiction of the court pursuant to MCL 712A.2(b).” Relevant to the court’s determination were that the children were currently in a safe placement with their mother and, according to the court, were sufficiently safeguarded by orders suspending respondent’s parenting time entered in ongoing divorce/custody and personal protection proceedings, and that the alleged criminal sexual conduct involved an unrelated child and did not occur in the children’s home or presence.

Whether the trial court properly dismissed the petition on the basis that its allegations did not fall within the court’s jurisdiction is an issue of statutory interpretation that presents a question of law subject to de novo review. *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). “This Court reviews factual findings with respect to termination of parental rights under the clearly erroneous standard.” MCR 3.977(J); *In re Ramsey*, *supra* at 314.

Jurisdiction over termination proceedings is derived solely from statutes and the constitution. See *In re Ramsey*, *supra* at 313. The valid exercise of the court’s statutory jurisdiction is established by the contents of the petition after the judge or referee has found probable cause to believe that the allegations contained within the petition are true and fall within the statute granting jurisdiction, MCL 712A.2(b). MCR 3.961(B); MCR 3.962; MCR 3.965(B)(4) & (11); *In re Hatcher*, 443 Mich 426, 437, 444; 505 NW2d 834 (1993). If a determination is made that formal jurisdiction should be acquired, the court is required to authorize the petition. MCL 712A.11(1). The continued exercise of the court’s jurisdiction is proper if a trier of fact determines by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2. MCR 3.972(C)(1); *In re Hatcher*, *supra* at 438; *In re Ramsey*, *supra* at 314.

MCL 712A.2 provides, in pertinent part:

The court has the following authority and jurisdiction:

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(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his

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and there is probable cause to believe that one or more of the allegations is true.” MCR 3.961(B) requires, among other things, that the petition contain the “essential facts that constitute an offense against the child under the Juvenile Code.” See also MCL 712A.11(1) (“[A] preliminary inquiry may be made to determine whether the interests of the public or the juvenile require that further action be taken. If the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.”) Further, see MCL 712A.11(3) (the “petition [must] set forth plainly the facts that bring the juvenile within this chapter.”)

or her mental well-being, who is abandoned by his or her parents . . . or who is without proper custody or guardianship. . . .

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(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

The petition's allegations, if true, were sufficient to provide a basis for the court to exercise its jurisdiction over the children under MCL 712A.2(b)(1), to wit, respondent's alleged conduct subjected the children "to a substantial risk of harm to [their] emotional well-being." MCL 712A.2(b)(1). Although it is apparent that the trial court believed that the children were not at a substantial risk of harm because of their current placement with their mother and the orders prohibiting respondent's contact with the children, the fact that respondent was not allowed contact with them at the time that the petition was filed did not eliminate the substantial threat of harm to the children's mental and physical wellbeing posed by his conduct. See *In re Ramsey*, *supra* at 311-312. "[T]he Legislature envisioned and intended that the probate court could terminate the parental rights of just one parent" and the court need not rely on traditional custody and visitation proceedings to protect a child. *In re Marin*, 198 Mich App 560, 561, 566-568; 499 NW2d 400 (1993).

Further, although respondent was not accused of abusing or harming his own child, his alleged conduct in sexually abusing a young child with whom he resided was clearly relevant to his ability to parent his own children and, given the severity of the allegations, his continued presence in their lives poses a substantial threat of harm to their emotional and physical wellbeing. See *In re Powers*, 208 Mich App 582, 591-593; 528 NW2d 799 (1995) (the principle of anticipatory neglect or abuse may provide an appropriate basis for invoking jurisdiction and should not be limited to situations where parents abuse or neglect their own children). Additionally, the alleged conduct of failing to provide financial support for his children, failing to contact them when allowed to do so, verbally abusing them, physically abusing their mother in their presence, and respondent's ongoing absence from the children's lives because of orders suspending his parenting time as a result of his alleged criminal sexual conduct as well as domestic violence, if true, also arguably directly affected the children's emotional wellbeing.

Considering the foregoing, we conclude that respondent's alleged conduct, if true, subjected the children to a substantial risk of harm to their emotional wellbeing sufficient to exercise jurisdiction over the children under MCL 712A.2(b)(1). We also find that the allegations concerning respondent's failure to provide financial support for the children's care provided an additional basis for asserting jurisdiction over the children under MCL 712A.2(b)(1).<sup>2</sup> Therefore, the trial court erred in dismissing the neglect petition during the preliminary proceedings for a want of jurisdiction.

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<sup>2</sup> The allegations, however, did not provide a basis for asserting jurisdiction over the children under MCL 712A.2(b)(2) because the children's home in which they resided with their mother  
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We remand and direct the trial court to reinstate the petition. It should then be determined, by trial, plea of admission, or plea of no contest, whether a preponderance of the evidence supports the court's continued jurisdiction over the children. *In re Hatcher*, *supra* at 438; *In re Ramsey*, *supra* at 314. The court should ensure that respondent is afforded the procedural safeguards applicable in adjudicative proceedings, such as the right to a jury trial, MCL 712A.17(2); *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993), intended to "protect parents from the risk of erroneous deprivation of their liberty interest in the management of their children." *In re PAP*, 247 Mich App 148, 153; 640 NW2d 880 (2001). If, after a trier of fact considers the merits of the petition's allegations, it is determined, by a preponderance of the evidence, that the children are subject to the court's continued jurisdiction within the meaning of MCL 712A.2(b), the court may proceed to the dispositional phase to consider whether the evidence clearly and convincingly established grounds for termination of respondent's parental rights in accordance with the petition. MCR 3.977(E); *In re Ramsey*, *supra* at 314. When, as here, termination of parental rights is requested at the initial dispositional hearing, the trial court's determination whether a statutory ground for termination exists under MCL 712A.19b(3) must be based on legally admissible evidence introduced at the adjudicative trial. MCR 3.977(E). Petitioner bears the burden of proof on this issue. MCR 3.977(A)(3).<sup>3</sup>

In light of our conclusion that the court improperly dismissed the petition for want of jurisdiction, we need not determine whether the submission of a petition was mandatory in this case. *Cowles v Bank West*, 476 Mich 1, 32; 719 NW2d 94 (2006). We note, however, that petitioner had discretion to file a petition requesting termination of respondent's parental rights. MCL 722.638(3).

Petitioner requests that we remand this matter to a different judge. While it was apparent that the trial judge believed that the children were not at a substantial risk of harm sufficient to invoke jurisdiction over them given their current placement with their mother and the orders prohibiting respondent's contact with them, we are not convinced from our review of the limited record in this case that the trial judge "would have difficulty setting aside her previously expressed views and justly resolve the issue at a subsequent hearing." *People v Pillar*, 233 Mich App 267, 271; 590 NW2d 622 (1998). A trial judge is presumed to be impartial. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). The limited record before us does not rebut that presumption.

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was not alleged to be an unfit place to live because of criminality or depravity on the part of a parent. MCL 712A.2(b)(2).

<sup>3</sup> Respondent argues that the evidence did not clearly and convincingly support the grounds for termination alleged in the petition, i.e., MCL 712A.19b(3)(g) and (j). This issue, however, is not ripe for our review because the trial court never addressed it, having dismissed the petition during the preliminary phase of the proceedings. *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996).

Reversed and remanded for proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Pat M. Donofrio  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey